

After Recording Return to:
City of Frisco
City Secretary
6101 Frisco Square Boulevard, 5th Floor
Frisco, Texas 75034

IMPACT FEE AGREEMENT
(Thoroughfare Impact Fee)
Custer Bridges Development
NW Corner of Custer and SH121

THIS IMPACT FEE AGREEMENT (this "Agreement"), dated as of _____, 2008 (the "date of the Agreement"), is made and entered into by and between the City of Frisco, Texas, a Texas municipal corporation ("Frisco and/or City"), and Custer Road Marketplace, Ltd, a Texas limited partnership ("Developer").

WHEREAS, Developer is the sole owner of that certain tract of land situated in the City of Frisco, Collin County, Texas, containing approximately 53.1509 acres, as more particularly described and depicted on **Exhibit "A,"** attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to obtain Developer's commitment to bury all electric utility lines on the Property and to obtain a commitment for future right-of-way dedication for the construction of deceleration lanes on Custer Road\FM 2478 and/or SH121 frontage roads adjacent to the Property as provided herein; and

WHEREAS, Developer desires to fulfill its obligation to pay thoroughfare impact fees on the Property as prescribed in Ordinance No. 90-06-08 and as amended by Ordinance Nos. 91-03-01, 93-02-07, 94-04-07, 00-02-29, 01-09-66, 05-07-53 and any other amendment, as they exist or may amended (individually and collectively the "Impact Fee Ordinance"); and

WHEREAS, Developer and Frisco agree that Developer may fulfill its obligation to pay thoroughfare impact fees in the manner set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Developer agree as follows:

1. **Recitals Incorporated.** All of the above recitals are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

2. **Land Subject to Agreement.** The land that is subject to this Agreement is that defined as the Property above. Developer hereby declares that it is the sole owner of the Property and is authorized to bind such Property, themselves, any creditors or lien holders, and any successors and/or assigns under the terms of this Agreement.

3. **Required Electric Utility Burial and Dedications.**

- a. Developer shall, in conformance with all Frisco, State, Federal and electric utility company regulations, rules, procedures and ordinances, shall take all actions necessary to bury any and all electric utility lines on any lot within the Property at the time of its development. This provision includes Developer's obligation to fund all cost of burial of such electric utility lines. The only exception to this provision is the existing overhead line in the north western corner of the Property that currently serves the Frisco Pump Station #1 may remain overhead so long as all portions of the line are between any future building on the Property and Frisco Pump Station #1 and no portion of such line may be visible from either Custer Road\FM 2478 or the SH121 service road frontage; and
- b. Developer will dedicate at no cost to the City any and all right-of-way, easements, and temporary easements required for completion of the construction of road improvements in and along Custer Road\FM 2478 and/or the State Highway 121 main lane and/or interchange expansion and/or frontage road, as well as for signalization, drainage, stormwater, water and sewer infrastructure; said dedications and easements to be made in a form solely approved by Frisco upon thirty (30) days written request from Frisco.

4. **Impact Fees.** This Agreement shall only apply to thoroughfare impact fees. The Property shall be subject to the thoroughfare impact fee schedule in effect at the time of development; provided however, if the Developer complies with the terms and conditions of this Agreement thoroughfare impact fees shall not exceed Fifteen Thousand and No/100 Dollars (\$15,000.00) per gross acre.

5. **Default.** If Developer fails to comply with the provisions of this Agreement, Frisco shall have the following remedies, in addition to Frisco's other rights and remedies:

- a. to refuse to issue building permits for the Property; and/or
- b. to refuse to issue a certificate of occupancy for any building on the Property; and/or
- c. to file this instrument in the Land Records of Collin County as a lien and/or encumbrance on the Property; and/or
- d. to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or
- e. to nullify paragraph four (4) of this Agreement and immediately enforce the Impact Fee Ordinance through imposition of the full thoroughfare impact fee in affect at the time of default and making such immediately due and payable; and/or
- f. to seek specific enforcement of this Agreement; and/or

In addition to any other remedy available to the Frisco, if Developer files a lawsuit against any of the other parties to this Agreement, this Agreement is null and void as of the date of filing the lawsuit and the provisions of 5.e. above shall apply.

In the event Frisco fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement as its sole and exclusive remedy.

6. **Limitation of Liability.** Notwithstanding anything to the contrary herein, the parties agree and acknowledge that Frisco shall not, under any circumstance, be required to tender, and/or be liable to Developer for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein save and except the reimbursement of the differential in the amount of Thoroughfare Impact Fees assessed on Lot 2R Block A, as more particularly described and depicted on **Exhibit "B,"** attached hereto and incorporated herein for all purposes, prior to the date of this Agreement and the amount of Thoroughfare Impact Fees that would have been assessed in accordance with Section 4 above had this Agreement been in effect ("Reimbursement Amount"). Calculation of Reimbursement Amount is as follows: Amount of previously assessed Thoroughfare Impact Fees on Lot 2R Block A minus [-] amount of Thoroughfare Impact Fees on Lot 2R Block A as calculated in accordance with Section 4 of this Agreement equals [=] Reimbursement Amount.

7. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon the Developer, its officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Collin County, Texas.

8. **Limitations of Agreement.** The parties hereto acknowledge that this Agreement is limited to burial of electric utility lines and the dedication of land for right-of-way and easements as described herein, and thoroughfare impact fees. Frisco ordinances covering property taxes, utility rates, permit fees, inspection fees, development fees, sewer and water impact fees, tap fees, pro-rata fees and the like are not affected by this Agreement. This Agreement does not waive or limit any of the obligations of Developer to Frisco under any ordinance, whether now existing or in the future arising. Further, this Agreement does not alter or waive any obligations of Developer under that certain Retail Development Agreement by and between the City of Frisco and Custer Road\FM 2478 Marketplace, Ltd. dated August 20, 2008.

9. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco, addressed to it at:
City of Frisco
City Manager
6101 Frisco Square Boulevard, 5th Floor
Frisco, Texas 75034
Telephone: (972) 292-5100
Facsimile: (972) 292-5122

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attention: Richard Abernathy
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4040

If to Developer, addressed to it at:

Stanley V. Graff
8901 Governors Row
Dallas, Texas 75247
Telephone: (214) 951-7434
Facsimile: (214) 638-7735

With a copy to:

Telephone: _____
Facsimile: _____

10. **INDEMNIFICATION.** DEVELOPER, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE APPLICABLE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR

WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. IN THIS CONNECTION, DEVELOPER, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FOR CITY'S, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND/OR EMPLOYEES, OWN NEGLIGENCE, IN WHATEVER FORM, ARISING OUT OF ANY ACT OR OMISSION, TAKEN OR FAILED TO BE TAKEN BY THE CITY, RELATING IN ANY MANNER TO THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF CAUSE OR ANY CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF CITY. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN DEVELOPER IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE DEVELOPER FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY DEVELOPER THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO DEVELOPER WITHIN ONE HUNDRED TWENTY (120) DAY OF THE DATE OF THE JUDGMENT.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH OBLIGATION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

A. DEVELOPER ACKNOWLEDGES AND AGREES THAT:

- (I) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:**

- (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
 - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.
- (II) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON THE FRISCO'S INFRASTRUCTURE.
- (III) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO FRISCO PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. DEVELOPER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (IV) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPERS' RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.
- i. DEVELOPER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.
 - ii. DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

iii. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Frisco with fair notice of any Developer's project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

13. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to, a proceeding brought pursuant to Paragraphs 5 and 11 above, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

14. **Developer's Warranties/Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

16. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

17. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

18. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

19. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

20. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

22. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

23. **Assignment/Binding Effect.** This Agreement is assignable upon the following conditions:

- a. the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of the Frisco;
- b. at the time of assignment, Developer must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of Frisco;
- c. Developer will file any approved, executed assignments in the Land Records of Collin County, Texas; and
- d. Developer shall provide Frisco with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, partners, employees, representatives, agents, vendors, grantees, and/or trustees, heirs, executors, administrators, legal representatives, successors and assigns, as authorized herein.

24. **Indemnification.** The parties agree that the Indemnity provisions set forth in Paragraphs 10 herein are conspicuous, and the parties have read and understood the same.

25. **Conveyances.** All conveyances required herein shall be made in a form acceptable to Frisco and free and clear of any and all encumbrances.

26. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

27. **Reference to Developer.** When referring to "Developer" herein, this Agreement shall refer to and be binding upon Developer, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

28. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

The City of Frisco, Texas
A Municipal Corporation

By: _____ Date: _____
George Purefoy
Its: City Manager

Custer Road Marketplace, Ltd.
A Texas Limited Partnership

By: **CRM/GP, LLC**
A Texas Limited Liability Company
It's General Partner

By: _____ Date: _____
Stanley V. Graff
Its: Manager

STATE OF TEXAS

§
§
§

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared **GEORGE A. PUREFOY**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **CITY OF FRISCO, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2008.

Notary Public in and for the State of Texas

My Commission Expires: _____

STATE OF TEXAS

§
§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared **STANLEY V. GRAFF**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for **CUSTER ROAD MARKETPLACE and CRM/LLC**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2008.

Notary Public in and for the State of Texas

My Commission Expires: _____

Exhibit "A"
"Property" Description
Approximately 53.1509 acres

[Three (3) Pages Attached]

LEGAL DESCRIPTION
53.1509 ACRES

BEING a tract of land situated in the James Campbell Survey, Abstract Number 190 and the S.M. Pulliman Survey, Abstract Number 707, City of Frisco, Collin County, Texas, and being all of Lots 1-6, Block A of the Revised Conveyance Plat of Custer Road Marketplace, an addition to the City of Frisco, Texas recorded in Cabinet O, Page 328, Map Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with cap found at the southeast corner of Lot 1, Block X of Hunters Creek Phase 5, an addition to the City of Frisco, Texas recorded in Cabinet N, Page 640, Map Records, Collin County, Texas, said point being in the west Right-of-Way line of F.M. 2478 (Custer Road, 120' public R.O.W.);

THENCE with the west Right-of-Way line of said F.M. 2478 (Custer Road) the following calls:
South 00°58'08" East a distance of 53.58 feet to an X-cut in concrete set for corner;
South 02°20'31" West a distance of 1054.88 feet to a 5/8" iron rod with red cap marked KHA set for corner at the beginning of a non-tangent curve to the left whose chord bears South 06°05'50" East a distance of 391.32 feet;

In a southerly direction with said non-tangent curve to the left having a radius of 1333.24 feet, a central angle of 16°52'41", and an arc distance of 392.74 feet to an X-cut in concrete set for corner;

South 00°46'25" East a distance of 135.54 feet to an aluminum TXDOT monument found for corner in the north Right-of-Way line of "Parcel 39," a called 4.309 acre tract of land described in a deed to the State of Texas for the purpose of Controlled Access Highway Facility for State Highway Number 121 recorded in Volume 4906, Page 3930, Land Records, Collin County, Texas;

THENCE with the north line of said "Parcel 39" State of Texas tract the following calls:
South 67°06'02" West a distance of 410.46 feet to an aluminum TXDOT monument found for corner;
South 76°26'31" West a distance of 203.29 feet to an aluminum TXDOT monument found for corner;
South 67°05'35" West a distance of 200.06 feet to an aluminum TXDOT monument found for corner;
South 62°38'44" West a distance of 213.76 feet to a 5/8" iron rod with red cap marked KHA set for corner in the east line of a tract of land described in a deed to MCF Investment Group, Inc. recorded in Volume 4478, Page 807, Land Records, Collin County, Texas;

EXHIBITDRAWING
CUSTER BRIDGES
CITY OF FRISCO, COLLIN COUNTY, TEXAS

G:\Survey\67270000-CUSTER BRIDGES\Custer Bridges-Legal Exhibit.dwg 4/11/2008 10:41:22 AM CDT



THENCE departing the north line of said "Parcel 39" State of Texas and with the east line of said MCF Investment Group, Inc. the following calls:

North 74°54'27" West a distance of 286.92 feet to a 5/8" iron rod with red cap marked KHA set for corner;

North 33°43'40" West a distance of 97.29 feet to a 5/8" iron rod with red cap marked KHA set for corner;

North 00°06'28" West a distance of 436.60 feet to a 5/8" iron rod with red cap marked KHA set for corner;

North 07°37'34" West a distance of 361.16 feet to a 1/2" iron rod found for corner in the south line of "Tract 1," a called 16.94 acre tract of land described a deed to the City of Frisco recorded in Collin County Clerk's File Number 95-0051003, Land Records, Collin County, Texas;

THENCE with the south and east line of said City of Frisco "Tract 1" the following calls:

North 89°08'55" East a distance of 50.00 feet to a 5/8" iron rod with red cap marked KHA set for corner;

North 02°20'31" East a distance of 1049.44 feet to a 5/8" iron rod with red cap marked KHA set for corner in the south line of Hunters Creek Phase 3, an addition to the City of Frisco, Texas recorded in Cabinet M, Page 546, Map Records, Collin County, Texas, from which a 5/8" iron rod found at the most westerly southwest corner of said Hunters Creek Phase 3 bears South 89°15'00" West a distance of 384.06 feet;

THENCE North 89°15'00" East with the south line of said Hunters Creek Phase 3 passing at 231.70 feet the southwest corner of said Hunters Creek Phase 5 and continuing for a total distance of 1235.70 feet to the **POINT OF BEGINNING** and containing 53.1509 acres of land.

Bearing system of this survey is based on City of Frisco Monuments 14 and 15 found in the field, whose positions are published on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone 4202. The horizontal coordinates of this survey are local surface coordinates derived from Frisco Monument 1 by computing a ground scale factor of 1.0001540152.



EXHIBITDRAWING
CUSTER BRIDGES
CITY OF FRISCO, COLLIN COUNTY, TEXAS

G:\Survey\67270000-CUSTER BRIDGES\Custer Bridges-Legal Exhibit.dwg 4/11/2008 10:41:22 AM CDT



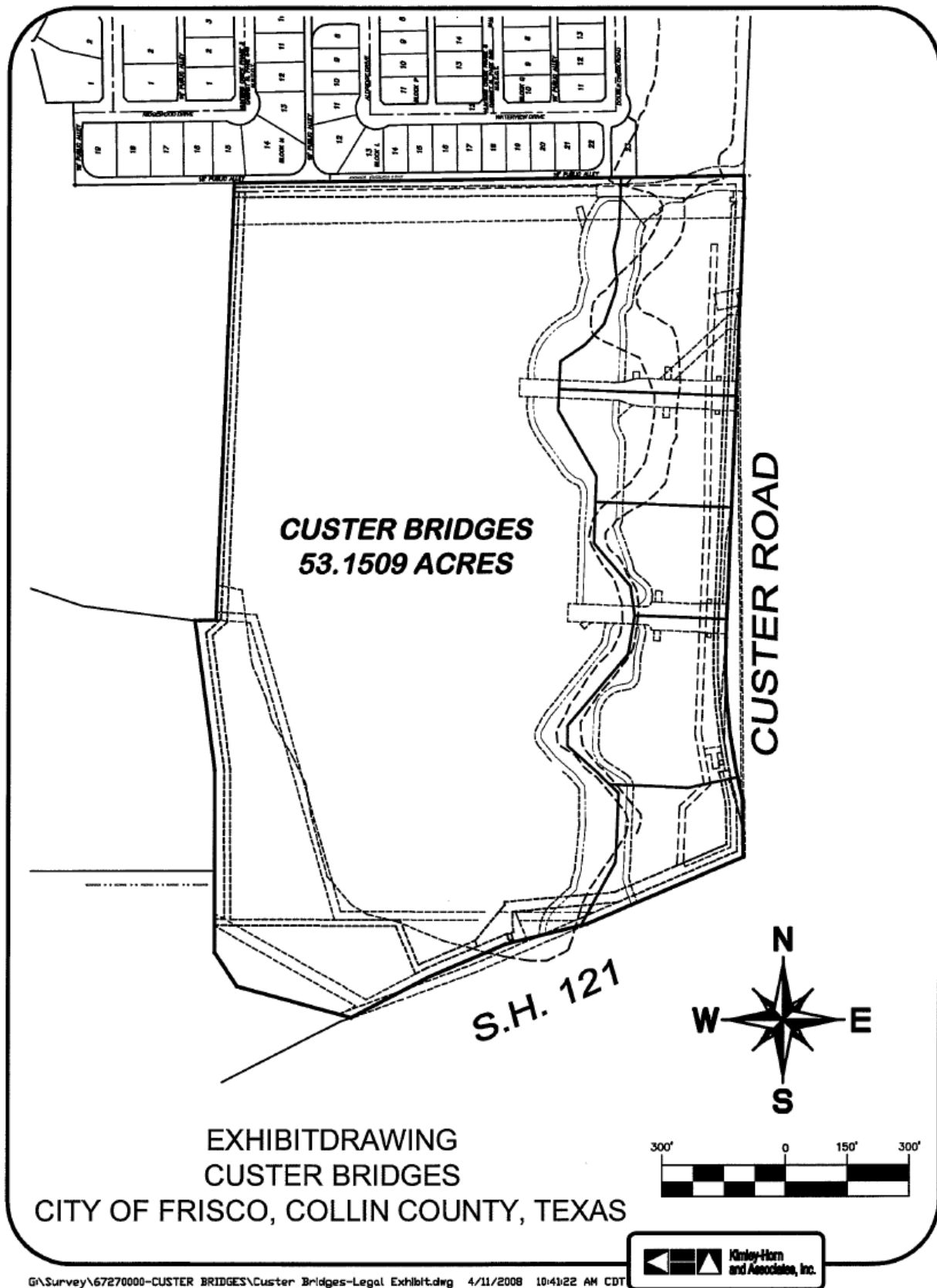


Exhibit "B"
"Lot 2R Block A" Description

[Two (2) Pages Attached]

Depicts general location on plat of Lot 2R Block A =

